

PE2085/Q: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad

Lord Advocate written submission, 15 December 2025

Thank you for your letter dated 19 November in relation to the above petition.

In that letter, you ask whether I would be prepared to engage with the Petitioner, David Cornock, his representative, Michael Marra MSP, and the Chief Constable with a view to progressing the issues raised in the petition.

I can advise the Committee that I met with Mr Cornock on 28 March 2024. Also present at that meeting were Mr Marra, Mairi Gougeon MSP and Dave Doogan MP. At that meeting, Mr Cornock outlined his concerns about the circumstances surrounding the death of his son and his unhappiness about the decisions that were taken in relation to any separate investigation of the death in Scotland.

It may be helpful for the Committee to know that I met with the Crown Agent and Deputy Crown Agent following that meeting, as I believed it was important for the Crown Office and Procurator Fiscal Service (COPFS) to consider what could be done to further improve communication with nearest relatives affected by deaths abroad. In response, the following took place:

- Information was added to the COPFS website for nearest relatives in relation to the investigation of deaths outwith the United Kingdom, including specific Scottish Fatalities Investigation Unit (SFIU) contact details for nearest relatives to get in touch with any questions or concerns. The information also includes links to Foreign, Commonwealth & Development Office (FCDO) advice and to UK-based organisations that can offer assistance, support and information.
- A Minute of Agreement was finalised with the Death Certification Review Service (DCRS) and Police Scotland updating the processes for reporting and investigating deaths abroad. The Minute includes detailed guidance on the facts to be considered when assessing whether a person was ordinarily resident in Scotland at the time of their death, with reference to relevant case law.
- One of the most significant changes of that updated process is that SFIU now writes to nearest relatives in relation to every reported death abroad to advise them of the decision that has been taken in relation to a separate investigation of the death in Scotland and the reasons for that decision,

and also to provide contact details for SFIU so that they may raise any questions or concerns. Style letters have been created for that purpose.

- Discussions have taken place with FCDO to ensure that accurate information is provided to families about the repatriation process to Scotland following a death abroad and the roles and responsibilities of our respective organisations.

I wrote to Ms Gougeon MSP to ensure that she and Mr Cornock were kept updated on the work being undertaken by COPFS.

As you will be aware, by virtue of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 the Crown only has jurisdiction to investigate a death that has taken place abroad if the person who died was ordinarily resident in Scotland at the time of their death. Information provided to me by Mr Cornock following our meeting regarding his son was carefully considered by an experienced Advocate Depute in relation to the question of whether David Cornock was ordinarily resident in Scotland at that time. The Advocate Depute concluded that it could not be said that David was ordinarily resident here at the time of his death and as a result there was no scope for an inquiry to be held into his death in Scotland. It remained the position therefore that we had no jurisdiction to investigate the circumstances surrounding David's death.

The petition being considered by the Committee focusses on the condition of ordinary residency detailed in Section 6 of the 2016 Act. The Crown is bound to follow the terms of the existing legislation and can only investigate a death that has happened abroad where we have jurisdiction to do so. It is a matter for Parliament to decide whether that legislation should be amended in any way. My only observation is that, while there is no statutory definition of 'ordinarily resident' within the 2016 Act, the test features in other areas of the law, including education, mental health, tax and immigration.

I do not consider that the lack of a formal definition adversely affects the Crown's decision-making. In relation to most of the deaths that are reported to the Crown, whether the person was ordinarily resident in Scotland will be clear from the initial information provided. An obvious example is a person who only leaves Scotland for a two-week holiday and dies during that holiday. In contrast, where the person had been living and working abroad outwith Scotland for many years it is extremely likely that they would not be considered to have been ordinarily resident. In relation to any reported death abroad where there is uncertainty about the residency status of the person who has died, we will instruct further enquiries to obtain information that will allow a determination to be made. That will usually include contact being made with nearest relatives, either by SFIU or Police Scotland, to obtain more details.

I note that, at the meeting of 12 November 2025, the Committee discussed the lack of Fatal Accident Inquiries held in relation to deaths abroad. As you know, prior to the implementation of the 2016 Act the Crown had no legislative basis to carry out any investigations in relation to a death abroad, except in rare circumstances where criminality may have occurred.

It is correct to say that no FAIs have been held to date in relation to a death abroad, although a number of deaths are currently being investigated where it may be decided in due course that it is in the public interest for an Inquiry to be held. Given that primacy for an investigation will sit with the country where the death occurred, it was always intended that such FAIs would only be held in exceptional circumstances. Indeed, in his Review of Fatal Accident Inquiry Legislation report, Lord Cullen – when recommending that the legislation be extended to allow for FAIs to be held in relation to deaths abroad - indicated that he envisaged that ‘out of respect for the investigating authorities in the foreign jurisdiction, such discretion might be exercised rarely’.

However, these provisions have allowed the Crown – where we have jurisdiction - to conduct investigations into deaths abroad which would not have been possible prior to the legislation being enacted. These have included the instruction of separate post mortem examinations in Scotland, the obtaining of statements from witnesses based in Scotland, the instruction of expert opinion and the requesting of information from abroad about the enquiries that have taken place and the findings. These investigations have provided answers and reassurance to bereaved relatives in a number of cases. Where possible, we have also tried to assist families in obtaining answers to questions they have, such as the process for securing the return of an organ that was retained following a post mortem examination abroad.

Where we do have jurisdiction, in many cases the death has been or is being fully investigated by the authorities in the country where the death occurred, and the primary focus of the nearest relative is the release of the body of their loved one so that the funeral in Scotland may take place. In such cases, the processes we have in place allow decisions to be taken quickly to prevent further distress being caused to families.

I hope this information is of some assistance to the Committee.

Yours sincerely,

THE RIGHT HONOURABLE DOROTHY BAIN KC
LORD ADVOCATE